

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III

SC03-1846

MOTION FOR SUMMARY JUDGMENT
AMENDED FORMAL CHARGE IV

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby moves this Honorable Court for Summary Judgment as to the allegations of Amended Formal Charge IV, and as grounds states the following:

UNDISPUTED FACTS

1. Amended Formal Charge IV asserts that Judge Renke knowingly and purposefully misrepresented in Exhibit A his judicial experience when he described himself as having ““real judicial experience as a hearing officer in hearing appeals from administrative law judges’, when [his] actual participation was limited to one instance where [he] acted as a hearing officer and to other instances where [he] was sitting as a board member of an administrative agency.”

2. Exhibit A to the Amended Formal Charges does not state that he has “real judicial experience as a hearing officer in hearing appeals from administrative law judges”as the Notice of Amended Formal Charges alleges. Rather, it states

that he has “real judicial experience as a hearing officer **and** in hearing appeals from administrative law judges.” (*emphasis added*).

3. The Southwest Water Management District (the “District”) is a regulatory agency created by statute and operates pursuant to authority granted by the legislature in Chapter 373, Florida Statutes and procedurally pursuant to Chapter 120, Florida Statutes. Chapter 120, Florida Statutes is the Florida Administrative Procedures Act. Under the authority of Chapter 120, an administrative hearing officer conducts a full evidentiary hearing and then provides to the District a proposed final order for consideration and approval. The members of the Governing Board act like an appellate panel in reviewing the administrative hearing officer’s orders and ultimately entering a final order. Judge Renke actively participated in the consideration of twenty-three recommended orders entered by the Department of Administrative Hearings.

4. William Bilenky, the District’s General Counsel, who had previously served as General Counsel to the Florida Public Service Commission and who had prior experience as a research assistant to a judge in the District Court of Appeal for the First District and a research assistant to a Justice on the Florida Supreme Court, witnessed Judge Renke’s efforts in considering the recommended orders. Mr. Bilenky noted that Judge Renke actively participated in those proceedings, carrying out sophisticated reviews of the records, asking insightful questions of

staff members and identifying key legal issues. (See Affidavit of William S. Bilenky, attached as Exhibit 1).

5. In cases in which there are no material issues of fact and the controversy only involves disputed legal issues, a Governing Board member is appointed to serve as a hearing officer. Judge Renke was appointed to act as a hearing officer in a case styled Milo Thomas v. Southwest Florida Water Management District, WUP No. 2011634.002. The matter was one of first impression regarding the interpretation of a statute on which there were no prior judicial interpretations and the record consisted of a seventy-seven page transcript of legal arguments as well as forty-six docket entries for pleadings. (Exhibit 1).

6. In addition, Mr. Bilenky had the opportunity to observe the judge's services as a hearing officer and formed a positive opinion concerning his work ethic and ultimate product. Although Mr. Bilenky believes that he expended approximately 100 hours in the consideration of Milo Thomas v. Southwest Florida Water Management District, he estimates that Judge Renke, as the hearing officer, devoted even more time, independently researching and formulating an opinion on the case, identifying issues and developing arguments that had not been raised by either party. Judge Renke finalized the drafted order prepared by Mr. Bilenky, adding and clarifying significant legal issues and legal conclusions that Mr. Bilenky had overlooked. (Exhibit 1).

7. The description of Judge Renke’s experience at SWFWMD as “real judicial experience” was a direct response to Declan Mansfield’s repeated references to acting as “Teen Drug Hearing Officer and Teen Court Judge.” (See Mr. Mansfield’s campaign literature, attached as Composite Exhibit 2). In contrast to Mr. Mansfield’s participation in the voluntary diversionary programs, Judge Renke emphasized his “real judicial experience.”

ARGUMENT

In Exhibit A, Judge Renke stated that he has “real judicial experience as a hearing officer **and** in hearing appeals from administrative law judges.” (*Emphasis added*). This assertion is true and clearly supported by the undisputed facts. Judge Renke was appointed to act as a hearing officer in a case styled Milo Thomas v. Southwest Florida Water Management District, WUP No. 2011634.002. In addition, as a member of the Governing Board, Judge Renke actively participated in the consideration of twenty-three recommended orders entered by the Department of Administrative Hearings and submitted to the District for approval. The affidavit of the general counsel of Southwest Florida Water Management District, Mr. William Bilenky, a highly qualified and independent lawyer, establishes that John Renke III’s statements concerning his judicial experience were accurate.

The JQC misquotes Exhibit A, claiming that Judge Renke stated that he “has real judicial experience as a hearing officer in hearing appeals from administrative law judges.” (*emphasis added*). The JQC then asserts that Judge Renke knowingly and purposefully misrepresented his “judicial experience” because his “actual participation was limited to one instance where [he] acted as hearing officer and to other instances where [he] was sitting as a board member of an administrative agency.” The JQC’s exclusion of the word “and” is critical because it changes the entire meaning of his statement, suggesting that he heard multiple appeals as a hearing officer rather than hearing the appeals as a member of the Governing Board. While one might argue that the JQC was intentionally trying to mislead the Hearing Panel and the public, the JQC’s error more aptly demonstrates the ease with which erroneous statements can occur. In any event, Judge Renke’s literature accurately and succinctly described his judicial experience while serving the District. Amended Formal Charge IV should be dismissed.

CONCLUSION

WHEREFORE, Respondent respectfully requests this Honorable Court enter an Order granting Summary Judgment as to Amended Formal Charge IV.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of August, 2005, the original of the foregoing Motion for Summary Judgment has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by regular U.S. Mail to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special

Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

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